



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2015-0443]

RIN 1625-AA00

Safety Zone; Nighttime Air show, Milwaukee Harbor; Milwaukee, Wisconsin

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to establish a safety zone within Milwaukee Harbor in Milwaukee, Wisconsin. This zone is intended to restrict vessels from a portion of Milwaukee Harbor due to an air show. This proposed safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the air show.

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2015-0443 using any one of the following methods:

(1) Federal eRulemaking Portal:  
<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S.  
Department of Transportation, West Building Ground Floor, Room  
W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Delivery: Same as mail address above, between 9  
a.m. and 5 p.m., Monday through Friday, except Federal  
holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments"  
portion of the SUPPLEMENTARY INFORMATION section below for  
instructions on submitting comments. To avoid duplication,  
please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on  
this proposed rule, call or e-mail Petty Officer Joseph McCollum,  
U.S. Coast Guard Sector Lake Michigan; telephone 414-747-7148,  
e-mail Joseph.P.McCollum@uscg.mil. If you have questions on  
viewing or submitting material to the docket, call Cheryl  
Collins, Program Manager, Docket Operations, telephone 202-  
366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

## A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

### 1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2015-0443), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment"

box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2015-0443" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number USCG-2015-0443 in the "SEARCH" box and click "Search." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

### 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

### 4. Public meeting

We do not now plan to hold a public meeting. You may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

### B. Regulatory History and Information

On February 18, 2015, the Coast Guard published a Final Rule entitled Safety Zones; Annual Events Requiring Safety zones in the Captain of the Port Lake Michigan Zone in the Federal Register (80 FR 8536). This final rule included a safety zone for the daytime operation of the Milwaukee Air and Water Show in the vicinity of McKinley Park in Table 165.929(f) (2).

#### C. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 33 CFR 1.05-1, 160.5; Department of Homeland Security Delegation No. 0170.1.

In May of 2015 the Coast Guard confirmed through the sponsors of the Milwaukee Air and Water Show that an additional air show will be added to the show this year. This additional show, expected to consist of maneuvering aircraft and parachuters, is scheduled to occur over a different location and at a differing time than the daytime air show. This night show is expected to occur over the waters of Milwaukee Harbor in the vicinity of Lakeshore State Park. The night show is expected to occur between 6 p.m. and 10 p.m. on July 25, 2015. This nighttime air show is expected to draw a large group of waterborne spectators. The Captain of the Port Lake Michigan has determined that the likelihood of transiting vessels in the waters over which the nighttime air show participants will fly presents a significant risk of serious injuries or fatalities. Such hazards include flaming debris from dropped flares, and falling aircraft.

#### D. Discussion of Proposed Rule

The Captain of the Port Lake Michigan has determined that a safety zone is necessary to mitigate the aforementioned

safety risks. Thus, this proposed rule establishes a safety zone that encompasses all waters of Milwaukee Harbor in the vicinity of Lakeshore State Park within an area bounded by the following coordinates, beginning at 43°02.547'N, 087°53.478'W, then southeast to 43°02.478'N, 087°52.877'W, then southwest to 43°01.493'N, 087°53.104'W, then northwest to 43°01.564'N, 087°53.697'W, then northwest returning to the point of origin (NAD 83).

This proposed rule will be effective from July 23, 2015 until July 26, 2015. This proposed rule would be enforced from 6 p.m. until 10 p.m. on each day from July 24, 2015 until July 26, 2015.

The Captain of the Port Lake Michigan will notify the public that the zone in this proposed rule is or will be enforced in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners.

All persons and vessels shall comply with the instructions of the Captain of the Port Lake Michigan or her designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or her designated on-scene representative. The Captain of the Port Lake Michigan or her designated on-scene representative may be contacted via VHF

Channel 16.

## E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

### 1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. Overall, we expect the economic impact of this proposed rule to be minimal and that a full Regulatory Evaluation is unnecessary.

### 2. Impact on Small Entities

Under The Regulatory Flexibility Act (5 U.S.C. 601-612),



we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor within the waters of Milwaukee Harbor in Milwaukee, Wisconsin during the times in which the safety zone is enforced in July of 2015.

This proposed safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule will be enforced for a limited time during the month of July; this proposed safety zone has been designed to allow traffic to pass safely around the zone whenever possible, and vessels will be allowed to pass through the zone with the permission of the Captain of the Port. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that

this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414)747-7148. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

### 5. Federalism

A rule has implications for federalism under Executive

Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### 8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes,

or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. An environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. This proposed rule involves the establishment of a safety zone and is therefore categorically excluded under figure 2-1, paragraph 34(g) of the Instruction. We seek any comments or information that may

lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0443 to read as follows:

§ 165.T09-0443 Safety Zone; Nighttime Air Show, Milwaukee Harbor, Milwaukee, Wisconsin.

(a) Location. This zone will encompass all waters of Milwaukee Harbor in the vicinity of Lakeshore State Park within an area bounded by the following coordinates, beginning at 43°02.547'N, 087°53.478'W, then southeast to 43°02.478'N, 087°52.877'W, then southwest to 43°01.493'N, 087°53.104'W, then northwest to 43°01.564'N, 087°53.697'W, then northwest returning to the point of origin (NAD 83).

(b) Effective period. This proposed rule will be effective from July 23, 2015 until July 26, 2015. This proposed rule would be enforced from 6 p.m. until 10 p.m. on each day from July 24, 2015 until July 26, 2015.

(c) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into, transiting, or anchoring in this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or her designated on-scene representative.

(2) This safety zone is closed to all vessel traffic except as permitted by the Captain of the Port Lake Michigan or her designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Lake Michigan is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Lake Michigan to act on her behalf. The Captain of the Port Lake Michigan or her designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or her designated on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or her

on-scene representative.

Dated: May 19, 2015

A.B. COCANOUR,  
Captain, U. S. Coast Guard,  
Captain of the Port Lake Michigan.  
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Date: 6/8/2015]